

JUN - 1 1989

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IN RE:

MERRILL K. HENSLEY and
KATHERINE P. HENSLEY, f/d/b/a
Pine Hill Dairy Farm,
Debtors.

JUDGMENT ENTERED ON

The debtors owe SAPCA sums in excess of \$100,000, pursuant to the terms of promissory notes signed by the debtors and dated August 23, 1983 and October 3, 1983. Each note provides for payment by the debtors of reasonable attorney's fees and all costs of collection in addition to the payment of principal and interest. The notes are secured by a first deed of trust on real property owned by the debtors located in Upper Homin Township of Buncombe County, consisting of a residence and approximately 35 acres. By order dated March 9, 1989, this court approved the sale of the real property to First Step Farm of Western North Carolina, Inc., a North Carolina non-profit corporation, for \$198,500. After payment of mortgages and other liens on the

property and payment of administrative costs, it appears there will be a surplus.

DISCUSSION

11 U.S.C. § 506(b) states that:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

The United States Court of Appeals for the Fourth Circuit has held, in considering compensation to be awarded to a debtor's attorney under § 330(a) of the Bankruptcy Code, that it is appropriate to consider the factors and analyses developed by the courts in applying other statutory provisions. Harman v. Levin, 772 F.2d 1150, 1152 (4th Cir. 1985). The Fourth Circuit also has implied that federal law, rather than state law, controls with respect to determining the allowance of attorney's fees for secured claimants under § 506(b). See Unsecured Creditors' Committee v. Walter E. Heller & Company Southeast, Inc., 768 F.2d 580 (4th Cir. 1985). Therefore, this court has considered the decisions of the Supreme Court and the Fourth Circuit Court of Appeals which establish the standards for awarding "reasonable compensation" to attorneys: Hensley v. Eckerhart, 461 U.S. 424 (1983); Blum v. Stenson, 465 U.S. 886 (1984); Pennsylvania v. Delaware Valley Cit. Council, ____ U.S. ____, 107 S.Ct. 3078 (1987); Lilly v. Harris-Teeter Supermarket, 842 F.2d 1496, 1570 (4th Cir. 1988); Daly v. Hill, 790 F.2d 1071 (4th Cir. 1986); and Barber v. Kimbrell's, Inc., 577 F.2d 216, cert. denied, 1139 U.S.

934 (1978), which adopted the standards of Johnson v. Ga. Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974).

The starting point for an objective initial calculation of a reasonable fee is the product of the reasonable hours expended and the reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. at 433.

Reasonable Hours

The reasonable hours are determined by considering such factors as: the skill and experience of the attorney; how the case was staffed (or over-staffed); the existence of excessive, redundant or unnecessary hours; the results obtained; the time and labor required by the case; and the novelty and difficulty of the issues involved. See Hensley v. Eckerhart, 461 U.S. 434-37 and Johnson v. Ga. Highway Express, 488 F.2d at 717-19. In this case, the statement submitted by SAPCA's counsel is inadequate. It is not a detailed statement describing the time spent on each item. Rather, services are "lumped" together by month, and counsel gives only a total of hours per month. Fortunately for counsel, the court is aware of the effort that counsel has spent in this case based on the hearings in which SAPCA's counsel has participated, and the other activity in the case. Upon the court's own review of the entire record in this case*, it finds that the work that was done was reasonable and necessary and that

* Including the fee application submitted by the attorneys for the debtor, which details conferences and telephone calls between attorneys for the debtor and SAPCA's attorney.

there was no overstaffing, redundant, unnecessary or excessive time put into the case. The case did not present novel or difficult issues, but it did involve changing circumstances which fully justified the aggressive representation by SAPCA's attorney. The court is quite familiar with SAPCA's attorney and finds him to be a fully competent creditor's bankruptcy practitioner, with over fourteen years of experience.

In addition, the "results obtained" factor emphasized in the case law also militates in SAPCA's favor. See Hensley v. Eckerhart, 461 U.S. at 434, 436, 437 and Lilly v. Harris-Teeter Supermarket, 842 F.2d at 1511. SAPCA's motions for relief from stay, adequate protection, and to dismiss, as well as SAPCA's participation in many hearings appear to be the primary reason that the case has reached the point of a quite favorable conclusion as far as SAPCA is concerned.

Reasonable Rate

The "'reasonable fee' is to be calculated according to the prevailing market rates in the relevant community." Blum v. Stenson, 465 U.S. at 895. The Supreme Court recognized that determining the "market rate" for the services of a lawyer is inherently difficult; and it suggested that that was at least partly a function of the type of services rendered and the lawyer's experience, skill and reputation. Id. at 895-96, n. 11. Other factors which bear on determining a reasonable hourly rate are: the skill requisite to properly perform the legal service; the preclusion of other employment by the attorney due to acceptance of the case; the customary fee; the contingent nature of the

fee; the amount involved and the results obtained; the experience, reputation and ability of the attorney; the undesirability of the case; the nature and length of the professional relationship with the client; and awards in similar cases. Johnson v. Ga. Highway Express, 448 F.2d at 717-19.

Here the fee application does not state the rate sought. When the fee sought is divided into the total hours, the rate seems to be \$107.98 per hour. The application does not give any amount for expenses. If expenses are included in the \$6,285.00 total, then the attorney's true hourly rate would be lower than \$107.98. The court is familiar with SAPCA's attorney (as noted above) and with the "market" rates for similar services in the Asheville area - all from dealing with them on a regular day-to-day basis. From that personal experience, the court finds the implied rate sought in the application to be reasonable. While the implied rate is the current prevailing rate, there has been little inflation in that rate in the nearly four years covered in the Application (certainly no more than would be accounted for by the loss of use of funds over that period of time). Consequently, use of the implied current rate here is an appropriate method of compensating for delayed payment. See Daly v. Hill, 790 F.2d at 1080-81.

CONCLUSION

After considering all of the foregoing, the court has concluded that SAPCA should be compensated as sought in its application in a total of \$6,285.00. However, counsel for SAPCA is admonished that in the future, fee applications should be

submitted in accordance with the Supreme Court and Fourth Circuit decisions cited above, and should contain a description of the attorney's hourly rate, detailed accountings of the time spent on each item and of expenses.

It is therefore **ORDERED** that SAPCA is awarded attorney's fees and costs pursuant to 11 U.S.C. § 506(b) in the amount of \$6,285.00, to be paid out of the surplus from the sale of the real property described above.

This the first day of June, 1989.



George R. Hodges
United States Bankruptcy Judge